

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3784 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

BHERUBHAI V NAI

Versus

SARAFRAJKHAN B PATHAN

Appearance:

MR VIPUL S MODI for Petitioner

MR RAJNI H MEHTA for Respondent No. 3

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 22/10/97

ORAL JUDGEMENT

1. Admit. Mr. Ajay R. Mehta appears and waives service of admission for respondent No.3 only. The rest of the respondents need not be served as admittedly the vehicle involved in the vehicular accident is insured with Respondent No.3.

2. This First Appeal is preferred by Behrubhai

Vashrambhai Nai who has received injuries in the vehicular accident that took place on 4th December, 1986. It appears that a vehicular accident took place in which said Bherubhai received injuries and he filed a petition being Motor Accident Claim Petition No.81 of 1988 before the Motor Accident Claims Tribunal (Auxiliary), Mehsana. He claimed the compensation of Rs.50,000/- from all the respondents jointly and severally with running interest at the rate of 12 per cent per annum from the date of the petition till realisation. It was his case that he sustained fracture on wrist of his left hand and he had also sustained injuries on his right leg and thigh and other parts of the body and he has got permanent disability in his hand. His hand got crushed between the body of the truck and the steel roll and thereafter he had become unconscious and he was admitted in the hospital. According to him, he was hale and healthy and he has no bad habit and he was earning Rs. 800/- to Rs.900 per month by doing labour work. Thereafter he was admitted in the Civil Hospital, Mehsana. He has purchased various medicines and one person was required to give him service as attendant and he has to spend various amount for such attendant also. He was also advised to take nutritious diet and he has spent amount of around Rs.7,000/- for medical treatment. His case is that even after accident, he was suffering pain in his hand and he has to take medicine and he is not in a position to lift heavy weight by his left hand and he is not able to do any labour work as he was doing in the past. Because of his injuries he has to remain in the hospital for a very long period and he has therefore claimed the compensation of Rs. 50,000/-. On service of the summons, the driver and the owner of the vehicle did not file any written statement but the Insurance Company filed the written statement and denied the liability of the Insurance Company. On the pleadings, the Tribunal framed points for determination and found that the claimant had sustained injuries due to rash and negligent driving of the driver of the vehicle involved in the accident and the Tribunal found that he was entitled to compensation of Rs.15,000/- to be recovered from all the opponents jointly and severally with running interest at the rate of 12 per cent from the date of the petition till realisation.

3. Being aggrieved thereby, the claimant namely the injured person has filed the present First Appeal for enhancement of the compensation, inter alia, contending that the amount awarded by the Tribunal to the injured person is not just and proper and is unreasonably low. On the main issue as to whether the claimant proved that

he received injuries due to rash and negligent driving of the driver of the vehicle involved in the accident, the Tribunal has recorded the finding in the affirmative. However, on the question of compensation, the Tribunal simply awarded the amount of Rs. 15,000/- to the injured person and he has aggrieved thereby and hence the present First Appeal is preferred before this Court.

4. The claimant has examined himself at Exhibit 26 and he has stated that he was doing labour work in the truck and the truck was loaded with iron rolls and they were standing in the truck and they had to do the labour work of loading and unloading the iron rolls. It was his case that the truck was being driven at an excessive speed and near village Gharmoda, the opponent No.1 applied breaks all of a sudden and the iron rolls slipped and fell upon him and he thereupon received injuries. He has produced the medical certificate issued by the Medical Officer, Civil Hospital, Mehsana at Exhibit 21 and primarily he was treated by Medical Officer, Government Dispensary, Chanasma, and his case was referred for X-ray opinion. From the X-ray report, it transpires that there was a fracture on lower end of left radius and styloled process of left ulna. The claimant was admitted in ward and discharged on 9.12.1986 at 9.00 a.m. As per the opinion of the Doctor, injuries are possible by hard and blunt object and can heal in four to six weeks if no complication arise. It shows that the injuries are proved by the said certificate. The claimant has also produced treatment card and he has also produced permanent disability certificate at Exh. 22. It shows that Orthopaedic Surgeon has examined and as per his certificate, there is permanent disability of 20 per cent on the left hand of the claimant. Hence, according to the Orthopaedic Surgeon, looking to the function of the whole body, 10% disability should be taken for determining permanent partial disability and the loss suffered because of such disability.

5. Mr. Vipul Modi, the learned counsel appearing for the injured claimant, however, very vehemently submitted before the court that the amount awarded by the Tribunal is too low and is not as per the principles laid down by various Division Benches of this Court while determining the amount of compensation. In his submission, to a injured claimant who has undergone the pain, shock and suffering of the injury and who is suffering the permanent partial disability, any labour work which he is required to perform, some more amount ought to have been awarded. In my opinion, his submission is well founded. Though the court need not be

unnecessarily charitable in awarding compensation, it shall have to be kept in mind that the injured claimant has suffered permanent partial disability of 10 per cent in the body as a whole and to that extent, his working capacity as a labourer is reduced. The claimant has on the other hand stated in his evidence that he was doing the labour work and was earning Rs.800 to Rs.900 per month. The Tribunal unfortunately in para 19 of the judgment, taken the income of the injured at Rs. 300 to Rs.400/- per month, that is the income which he is earning by way of labour work after the accident and after received the injury. In fact, therefore, the Tribunal ought to have taken in to consideration his regular income from labour work before accident at Rs. 800/- per month and if permanent partial disability of 10 per cent is applied, then the monthly future loss of income would work out to Rs.80. The yearly loss of income would work out to Rs.960. The Tribunal has looking to the age of the injured, applied the multiplier of 15, and if, the said multiplier is applied, the future loss of income would work out to Rs. 14,400/-.

6. Looking to the injuries sustained by the claimant he has deposed that he was not in a position to do the labour work for a period of three months. The Tribunal, however, has been over miserly firstly in taking his income to be of Rs. 300 and then awarding Rs. 900 only towards the actual loss of income. If Rs. 800 is taken as income of the injured claimant and if he was not in a position to work for three months, the actual loss of income works out to Rs.2400/-. The Tribunal has awarded Rs.5,000/- towards pain, shock and suffering. Looking to the injuries sustained by the injured claimant, the said amount can be reasonably enhanced so as to bring it within brackets to Rs.15,000/-. The total enhanced amount would thus work out to Rs. 20,500 and the claimant would be entitled to recover in all, amount of Rs. 35,500/-. The Insurance Company, namely, New India Insurance Company Limited shall deposit the aforesaid enhanced amount within six weeks from today and the enhanced amount awarded by this court shall be deposited in any scheduled nationalised bank for a period of 5 years and the actual interest accruing thereon is directed to be paid to the claimant Bherubhai Vashrambhai Nai. At the maturity of the said Fixed Deposit Receipt, the enhanced amount shall be paid by Account Payee Cheque in favour of the claimant. The First Appeal accordingly succeeds partially to the aforesaid extent only. There shall be no order as to costs in this First Appeal.

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